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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

5 HYDRO-BLOK USA LLC, et al.,

6 Plaintiffs,

7 v.

8 WEDI CORP.,

Defendant.

C15-671 TSZ

ORDER

9 WEDI CORP.,

10 Plaintiff,

11 v.

12 BRIAN WRIGHT, et al.,

Defendants.

13 THIS MATTER comes before the Court on (i) a motion, docket no. 115, brought
14 by Brian Wright and Sound Product Sales L.L.C. (collectively, “Sound Product”), to
15 confirm the arbitral award issued on June 23, 2017, docket no. 101-3; (ii) a motion,
16 docket no. 107, brought by Brian Wright, Sound Product Sales L.L.C., Hydro-Blok USA,
17 LLC, and Hydroblok International Ltd. (collectively, “Hydro-Blok”), for an order to
18 show cause why wedi Corp. and its attorneys should not be held in contempt for violating
19 the Stipulated Protective Order, docket no. 41; and (iii) a motion, docket no. 119, filed by
20 wedi Corp. concerning whether its response to Hydro-Blok’s motion, as well as its
21 supporting declaration and exhibits, should remain under seal. Having reviewed all
22 papers filed in support of, and in opposition to, each motion, the Court enters the
23 following order.

1 **Discussion**

2 **A. Confirming the Arbitral Award**

3 Pursuant to agreements between wedi Corp. (“wedi”) and Sound Product, docket
4 nos. 101-1 & 101-2, the parties were directed to arbitrate wedi’s breach of contract,
5 breach of fiduciary duty, civil conspiracy, and unjust enrichment claims against Sound
6 Product. See Order (docket no. 26); see also Am. Compl. at Counts I-IV (docket no. 17).
7 The parties also arbitrated wedi’s allegation that Sound Product violated Washington’s
8 Uniform Trade Secrets Act, which had been pleaded as a counterclaim in this matter.
9 See Am. Counterclaims at Count VII (docket no. 64). The arbitrator found against wedi
10 and in favor of Sound Product on all claims other than breach of contract; on the contract
11 claim, the arbitrator awarded to wedi only nominal damages of \$1.00. See Award
12 (docket no. 101-3). The arbitrator denied wedi’s request for attorneys’ fees, concluding
13 that the “fair and just result is to leave the parties where they stand.” Id. (docket
14 no. 101-3 at 17). The arbitrator further indicated that Sound Product had waived its
15 ability to recover attorneys’ fees against wedi. Id. (docket no. 101-3 at 5). On Sound
16 Product’s motion, the Court struck this portion of the arbitral award. See Order (docket
17 no. 111).

18 Sound Product now seeks to confirm the arbitral award, as modified. In response,
19 wedi does not dispute the propriety of confirming the arbitral award pursuant to the
20 Federal Arbitration Act, see 9 U.S.C. § 9, but it takes issue with the form of Sound
21 Product’s proposed order, docket no. 115-1. The Court declines to adopt Sound
22 Product’s proposed form of order, but otherwise GRANTS the motion to confirm the
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1 arbitral award. Seeing no just reason for delay, see Fed. R. Civ. P. 54(b), the Court will
2 enter an appropriate partial judgment.

3 **B. Violating the Stipulated Protective Order**

4 Pursuant to the parties' stipulation, the Court entered a protective order in this case
5 that tracks the district's model order. See Stip. Prot. Order (docket no. 41); see also
6 Local Civil Rule 26(c)(2). The Stipulated Protective Order provides that a party
7 receiving confidential material from another party may use it "only for prosecuting,
8 defending, or attempting to settle this litigation." Stip. Prot. Order at ¶ 4.1 (docket
9 no. 41). In addition, a party receiving confidential material must confer with the party
10 designating the material as confidential before filing, discussing, or referencing such
11 material in court filings. Id. at ¶ 4.3. Hydro-Blok alleges that wedi and its attorneys
12 violated these provisions of the Stipulated Protective Order by filing a complaint in the
13 Northern District of Illinois against Seattle Glass Block Window, Inc. ("Seattle Glass"),
14 another entity owned by Brian Wright, which contained or referenced confidential
15 material received by wedi in this matter. The complaint against Seattle Glass was filed
16 on September 1, 2017, see Ex. A to Anable Decl. (docket no. 108-1), and it remained
17 available for public view until October 2, 2017, when it was temporarily sealed on wedi's
18 motion.¹ See Notification of Docket Entry (N.D. Ill. Case No. 1:17-cv-6368, docket
19 no. 13). A motion is currently pending in the Northern District of Illinois to dismiss for
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21 ¹ According to wedi's counsel, the complaint was sealed on September 22, 2017, upon his
22 telephonic request to the assigned judge's courtroom deputy clerk. See Becka Decl. at ¶ 3
23 (docket no. 121). The docket does not, however, confirm that the complaint was sealed prior to
October 2, 2017.

1 lack of personal jurisdiction and improper venue or, in the alternative, to transfer the case
2 to this district.

3 In response to Hydro-Blok's motion for an order to show cause why wedi and its
4 attorneys should not be held in contempt, wedi argues that the complaint against Seattle
5 Glass does not use or disclose material designated confidential by Hydro-Blok, but
6 instead relies on wedi's own information, some of which Brian Wright, on behalf of
7 Seattle Glass, allegedly improperly disclosed to wedi's competitors. The Court is not
8 persuaded by wedi's analysis. In several paragraphs of the complaint against Seattle
9 Glass, the key factual assertions are based on confidential documents disclosed by
10 Hydro-Blok in this case. Compare wedi's Am. Counterclaims at ¶¶ 69, 74, & 77 (docket
11 no. 52-1) with Compl. at ¶¶ 30, 42, 45, & 46, Ex. A to Anable Decl. (docket no. 108-1);
12 see also Minute Order at ¶ 4 (docket no. 63). Although the sales and other substantive
13 information contained in the Hydro-Blok material might have actually belonged to wedi,
14 the fact that Brian Wright forwarded such data to others was learned only from the
15 disclosures made in this matter pursuant to the Stipulated Protective Order. Thus, wedi
16 and its counsel were precluded by the Stipulated Protective Order from using such
17 evidence to craft a pleading in a different proceeding.

18 The Stipulated Protective Order would not, however, have prevented wedi from
19 relying on confidential material disclosed in this matter to join Seattle Glass as a party in
20 this action, and the real issue here is not that wedi asserts claims against Seattle Glass, but
21 rather that it has done so in the Northern District of Illinois. Given that Brian Wright, a
22 resident of Washington, is already a party in this litigation, and that Seattle Glass is a
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1 Washington corporation, see Ex. A to Anable Decl. (docket no. 108-1), wedi's behavior
2 appears to be sheer forum shopping. The Court disapproves of such gamesmanship, but
3 also recognizes that, if wedi's allegations have any truth to them, the Hydro-Blok entities
4 and Seattle Glass do not have entirely clean hands.

5 Although wedi has violated the Stipulated Protective Order, the Court is not
6 convinced that Hydro-Blok's proposed remedy of forcing wedi's attorneys to withdraw is
7 appropriate, and the Court declines to do so. The Court DEFERS ruling on whether wedi
8 and its lawyers were "substantially justified" in their position, see Fed. R. Civ. P. 26(c)(3)
9 & 37(a)(5)(A)(ii), or whether Hydro-Blok should be awarded attorney's fees and costs in
10 connection with its motion and/or with the litigation in the Northern District of Illinois,
11 until after the remaining claims and counterclaims in this matter are resolved. If the
12 pending action against Seattle Glass is transferred from the Northern District of Illinois to
13 this district, it shall be treated as related to this case, and the parties shall file the requisite
14 notice of related case. See Local Civil Rule 3(g).

15 **C. Sealing Materials**

16 Although, in connection with Hydro-Blok's motion to show cause, wedi filed its
17 response, docket no. 120, and supporting declaration, docket no. 121, under seal, wedi
18 contends that, with a few exceptions, these documents should be available for public
19 view. See Reply at 1 & n.1 (docket no. 127) (agreeing that Exhibits 3 & 5-11 to the
20 supporting declaration should remain under seal). The Court is satisfied that all of the
21 responsive papers should remain under seal.

1 **Conclusion**

2 For the foregoing reasons, the Court ORDERS:

3 (1) Sound Product's motion, docket no. 115, to confirm the arbitral award is
4 GRANTED in part and DENIED in part; the arbitral award issued on June 23, 2017,
5 docket no. 101-3, is CONFIRMED and an appropriate partial judgment will be entered;

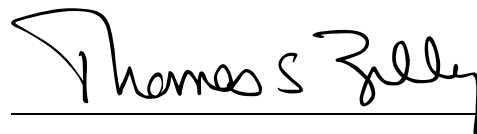
6 (2) Hydro-Blok's motion, docket no. 107, for an order to show cause why wedi
7 and its attorneys should not be held in contempt for violating the Stipulated Protective
8 Order, docket no. 41, is GRANTED in part, DENIED in part, and DEFERRED in part;

9 (3) The motion to seal, docket no. 119, filed by wedi, but supported by
10 Hydro-Blok, is GRANTED; wedi's response, docket no. 120, and the Declaration of
11 Daniel J. Becka and all exhibits thereto, docket no. 121, shall remain under seal; and

12 (4) The Clerk is DIRECTED to send a copy of this Order to all counsel of
13 record.

14 IT IS SO ORDERED.

15 DATED this 19th day of December, 2017.

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18 Thomas S. Zilly
19 United States District Judge
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